

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FREDERICK FRANKLIN,

Petitioner,

-v-

No. 12 Civ. 4354 (LTS)(KNF)

DARWIN LACLAIRE,

Respondent.

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ORDER

Pro se petitioner, Frederick Franklin (“Franklin” or “Petitioner”) filed a Petition for a Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2254, dated May 25, 2012, seeking relief from his 1986 judgment of conviction in the Supreme Court of the State of New York in New York County, on charges of second-degree murder, second-degree attempted murder and first-degree assault. Respondent subsequently moved to dismiss the Petition as untimely, pursuant to 28 U.S.C. § 2244(d)(1). On September 5, 2013, Magistrate Judge Michael Dolinger issued a Report & Recommendation (the “Report”), recommending that the Respondent’s motion to dismiss be granted and that Franklin’s Petition be dismissed with prejudice. Judge Dolinger also recommended that this Court deny the issuance of a certificate of appealability pursuant to 28 U.S.C. § 2253. Neither party has filed an objection to the Report. The Court has considered carefully the parties’ submissions and Magistrate Judge Dolinger’s thorough and carefully reasoned Report and, for the following reasons, the Report is adopted. Respondent’s motion is granted and the Petition is dismissed with prejudice.

When reviewing a Report, a district court “may accept, reject, or modify, in

whole or in part, the findings or recommendations made by the magistrate [magistrate judge].” 28 U.S.C.S. § 636(b)(1)(C) (LexisNexis 2001). Where no timely objection has been made, the district court will review the Report strictly for clear error. Watson v. Astrue, 08 Civ. 1523, 2010 WL 1645060, at *1 (S.D.N.Y. Apr. 22, 2010). Where specific objections are made, the Court must make a de novo determination as to those aspects of the report. United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997).

Magistrate Judge Dolinger’s Report recommends that the Court find Franklin’s Petition to be untimely and that tolling the statute of limitations period or applying an alternative start date for the limitations period is not warranted. The Court is satisfied that the Report contains no clear error and adopts the Report in its entirety.

In his Report, Judge Dolinger further advised the parties that, pursuant to 28 U.S.C. § 636(b)(1) and Federal Rules of Civil Procedure 6(a) and 6(d) and Rule 72, failure to file timely objections to the Report could result in their waiver and preclude appellate review. No party objected to the Report.

CONCLUSION

Accordingly, the Report is adopted, Respondent’s motion is granted and the Petition is dismissed with prejudice. This Memorandum Order resolves docket entry number 14.

The Clerk of the Court is hereby directed to close this case.

As Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. 28 U.S.C. § 2253.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith, and therefore in forma pauperis status is also denied for

the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: New York, New York
September 24, 2013

/S
LAURA TAYLOR SWAIN
United States District Judge